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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Kuhr, et al.	}	Attorney Docket No. 9134-0252
		}	
Title:	LANCING AID COMPRISING A	}	Group No. 3731
	LANCET SYSTEM THAT IS	}	
	PROTECTED AGAINST RE-USE	}	Examiner: Amy T. Lang
		}	
Serial No.:	10/806,483	}	Confirmation No. 2791
		}	
Filed:	March 22, 2004	}	

APPLICATION TO CORRECT PATENT TERM ADJUSTMENT
PURSUANT TO 37 C.F.R. § 1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.705, Applicants hereby request correction of the patent term adjustment (“PTA”) calculated by the United States Patent and Trademark Office (“USPTO”) provided with the Notice of Allowance of January 26, 2010. Specifically, Applicants received a Determination of Patent Term Adjustment under 35 U.S.C. § 1.54(b) having a mailing date of January 26, 2010, which indicated that the PTA to date is 530 days. Applicants submit that this PTA as determined by the USPTO is incorrect, as explained below.

Statement of Facts

1. A first adjustment of 542 days increase in patent term results from the USPTO’s failure to mail the first Office Action on the merits within fourteen (14) months of Applicants’ filing date. Specifically, the filing or 371(c) date is March 22, 2004, and the first non-final rejection was mailed on November 15, 2006. There is thus a difference of 542 days

between the 14 months following the Applicants' filing date (May 22, 2005) and the November 15, 2006 mailing date of the first non-final rejection. The PTA as shown on Private PAIR agrees with this 542 day increase.

2. Applicants had delays of 31, 28, 4, 34 and 12 days during prosecution of the application, totaling 109 days, which should be subtracted from the PTA. The PTA calculation available on Private PAIR agrees with this 109 day decrease in PTA.

3. The USPTO had further delays of 7 days to mail a non-final Rejection on May 29, 2008 and 90 days to mail a final Rejection on April 10, 2009, resulting in an additional 97 days that should be added to the PTA. The patent term calculation available on Private PAIR agrees with this 97 day further extension of PTA.

4. However, Applicants believe that they are also entitled to an additional 131 day addition to the PTA for the USPTO's failure to issue the patent within four (4) years of its filing date, or by March 22, 2007. This is the so-called "B delay" that the USPTO had previously in some circumstances not been including in the PTA, but which was found to be incorrect due to the Federal Circuit case of Wyeth v. Kappos. Furthermore, since Applicants filed a Request for Continued Examination ("RCE") on July 31, 2007, Applicants believe that this B delay can be at least arguably calculated at this time, since the RCE effectively stopped the further accrual of B delay at the time the RCE was filed. Specifically, there is a 131 day delay between the March 22, 2007 four (4) year date by which the application should have been granted as a patent and the July 31, 2007 date on which Applicants filed the RCE. This 131 day delay should be added to the PTA.

5. Applicants anticipate that the USPTO may determine that the Applicants' request for correction of PTA due to the USPTO's error in calculating the B delay is premature, since the patent has not yet been granted. However, Applicants believe that the B delay can at least arguably be calculated at this point in time. Therefore, to ensure that all rights to the full PTA to which they are entitled are preserved, Applicants are filing this request for correction of PTA with the filing of the payment of issue and publication fees.

CONCLUSION

Applicants submit that this is a complete request to correct the PTA initially determined by the USPTO. Applicants submit herewith the fee pursuant to 37 C.F.R. § 1.18(e). The USPTO is authorized to charge other fees which may be due in connection with this application to Deposit Account No. 02-3223, Bose McKinney & Evans LLP.

Respectfully submitted,

BOSE McKINNEY & EVANS LLP

A handwritten signature in black ink, appearing to read 'Michael C. Bartol', is written over a horizontal line.

Michael C. Bartol
Reg. No. 44,025

Submitted: April 21, 2010

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